

§ 401.603

the FCCA for the Department are located at 45 CFR part 30. These regulations apply only to the extent CMS regulations do not address a situation.

(2) *CMS regulations.* The following regulations govern specific debt management situations encountered by CMS and supplement this subpart:

(i) Claims against Medicare beneficiaries for the recovery of overpayments are covered in 20 CFR 404.515.

(ii) Adjustments in Railroad Retirement or Social Security benefits to recover Medicare overpayments to individuals are covered in §§ 405.350–405.358 of this chapter.

(iii) Claims against providers, physicians, or other suppliers of services for overpayments under Medicare and for assessment of interest are covered in §§ 405.377 and 405.378 of this chapter, respectively.

(iv) Claims against beneficiaries for unpaid hospital insurance or supplementary medical insurance premiums under Medicare are covered in § 408.110 of this chapter.

(v) State repayment of Medicaid funds by installments is covered in § 430.48 of this chapter.

(e) *Collection and compromise under other statutes and at common law.* The regulations in this subpart do not—

(1) Preclude disposition by CMS of claims under statutes, other than the FCCA, that provide for the collection or compromise of a claim, or suspension or termination of collection action.

(2) Affect any rights that CMS may have under common law as a creditor.

(f) *Fraud.* The regulations in this subpart do not apply to claims in which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of a debtor or any other party having an interest in the claim. CMS forwards these claims to the Department of Justice for disposition under 4 CFR 105.1.

(g) *Enforced collection.* CMS refers claims to the Department of Justice for enforced collection through litigation in those cases which cannot be compromised or on which collection action cannot be suspended or terminated in accordance with this subpart or the regulations issued jointly by the

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Attorney General and the Comptroller General.

[48 FR 39064, Aug. 29, 1983, as amended at 52 FR 48123, Dec. 18, 1987; 57 FR 56998, Dec. 2, 1992; 61 FR 49271, Sept. 19, 1996; 61 FR 63748, Dec. 2, 1996]

§ 401.603 Definitions.

For purposes of this subpart—

Claim means any debt owed to CMS.

Debtor means any individual, partnership, corporation, estate, trust or other legal entity against which CMS has a claim.

§ 401.605 Omissions not a defense.

The failure of CMS to comply with the regulations in this subpart, or with the related regulations listed in § 401.601(d), is not available as a defense to a debtor against whom CMS has a claim for money or property.

§ 401.607 Claims collection.

(a) *General policy.* CMS recovers amounts of claims due from debtors, including interest where appropriate, by—

(1) Direct collections in lump sums or in installments; or

(2) Offsets against monies owed to the debtor by the Federal government where possible.

(b) *Collection in lump sums.* Whenever possible, CMS attempts to collect claims in full in one lump sum. However, if CMS determines that a debtor is unable to pay the claim in one lump sum, CMS may instead enter into an agreement to accept regular installment payments.

(c) *Collection in installments.* Generally, CMS requires that all claims to be satisfied by installment payments must be liquidated in three years or less. If unusual circumstances exist, such as the possibility of debtor insolvency, an installment agreement that extends beyond three years may be approved.

(1) *Debtor request.* If a debtor desires to repay a claim in installments, the debtor must submit—

(i) A request to CMS; and

(ii) Any information required by CMS to make a decision regarding the request.

(2) *CMS decision.* CMS will determine the number, amount and frequency of

installment payments based on the information submitted by the debtor and on other factors such as—

- (i) Total amount of the claim;
- (ii) Debtor's ability to pay; and
- (iii) Cost to CMS of administering an installment agreement.

(d) *Collection by offset.* (1) CMS may offset, where possible, the amount of a claim against the amount of pay, compensation, benefits or other monies that a debtor is receiving or is due from the Federal government.

(2) Under regulations at §405.350–405.358 of this chapter, CMS may initiate adjustments in program payments to which an individual is entitled under title II of the Act (Federal Old Age, Survivors, and Disability Insurance Benefits) or under the Railroad Retirement Act of 1974 (45 U.S.C. 231) to recover Medicare overpayments.

[48 FR 39064, Aug. 29, 1983, as amended at 61 FR 49271, Sept. 19, 1996; 61 FR 63748, Dec. 2, 1996]

§401.613 **Compromise of claims.**

(a) *Amount of compromise.* HFCA requires that the amount to be recovered through a compromise of a claim must—

- (1) Bear a reasonable relation to the amount of the claim; and
- (2) Be recoverable through enforced collection procedures.

(b) *General factors.* After considering the bases for a decision to compromise a claim under paragraph (c) of this section, CMS may further consider factors such as—

- (1) The age and health of the debtor if the debtor is an individual;
- (2) Present and potential income of the debtor; and
- (3) Whether assets have been concealed or improperly transferred by the debtor.

(c) *Basis for compromise.* Bases on which CMS may compromise a claim include the following—

(1) *Inability to pay.* CMS may compromise a claim if it determines that the debtor, or the estate of a deceased debtor, does not have the present or prospective ability to pay the full amount of the claim within a reasonable time.

(2) *Litigative probabilities.* CMS may compromise a claim if it determines

that it would be difficult to prevail in a case before a court of law as a result of the legal issues involved or inability of the parties to agree to the facts of the case. The amount that CMS accepts in compromise under this provision will reflect—

(i) The likelihood that CMS would have prevailed on the legal question(s) involved;

(ii) Whether and to what extent CMS would have obtained a full or partial recovery of a judgment, depending on the availability of witnesses, or other evidentiary support for CMS's claim; and

(iii) The amount of court costs that would be assessed to CMS.

(3) *Cost of collecting the claim.* CMS may compromise a claim if it determines that the cost of collecting the claim does not justify the enforced collection of the full amount. In this case, CMS may adjust the amount it accepts as a compromise to allow an appropriate discount for the costs of collection it would have incurred but for the compromise.

(d) *Enforcement policy.* CMS may compromise statutory penalties, forfeitures, or debts established as an aid to enforcement or to compel compliance, if it determines that its enforcement policy, in terms of deterrence and securing compliance both present and future, is adequately served by acceptance of the compromise amount.

§401.615 **Payment of compromise amount.**

(a) *Time and manner of compromise.* Payment by the debtor of the amount that CMS has agreed to accept as a compromise in full settlement of a claim must be made within the time and in the manner prescribed by CMS. Accordingly, CMS will not settle a claim until the full payment of the compromise amount has been made.

(b) *Effect of failure to pay compromise amount.* Failure of the debtor to make payment, as provided by the compromise agreement, reinstates the full amount of the claim, less any amounts paid prior to the default.

(c) *Prohibition against grace periods.* CMS will not agree to inclusion of a provision in an installment agreement that would permit grace periods for